



WASTEWATER STATE REVOLVING FUND LOAN PROGRAM GUIDANCE

SECTION 1: PURPOSE

Pursuant to IC 4-4-11-15 (2), the following Guidance shall be used to implement the Wastewater State Revolving Fund (SRF) Loan Program established by IC 13-18-13. The purpose of the SRF Loan Program is to:

- (1) Provide loans or other financial assistance to participants for the planning, designing, construction, renovation, improvement, or expansion of wastewater collection and treatment systems and other activities necessary or convenient to complete these tasks in order to facilitate compliance with state and federal water quality standards.
- (2) Conduct all other activities that are permitted by the Clean Water Act.
- (3) Pay the cost of administering the fund and the program.

SECTION 2: DEFINITIONS

The following definitions apply throughout this Guidance document:

Authority means the Indiana Finance Authority created under IC 4-4-11, which administers the Wastewater SRF Program.

Authorized Representative means a person who has been designated by the governing Board of a Participant to sign documents on behalf of that Board.

Best management practice means a practice or combination of practices that have been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals.

Board means the governing body of the Participant seeking Financial Assistance.

Bond is the debt instrument which evidences the long term financing undertaken by a Participant in accordance with Indiana statutes for incurring debt.

Categorically Excluded means categorically excluded from substantive environmental review, which applies to a Proposed Project that has no physical impact, such as a planning project, or to a Proposed Project with minimal environmental impact as defined in the State Environmental Review Process (SERP) document.

CE means a Categorical Exclusion which is the environmental document issued when a Proposed Project has no physical impact or has minimal environmental impact as defined by the SERP.

Clean Water Act (CWA) means the Water Pollution Control Act, 33 U.S.C. 1251 et seq., in effect on January 1, 1989, and amended on December 16, 1996.

Due Diligence means a process that provides financial disclosures to the Program, as well as economic matters related to the Participant and its ability to repay the Loan.

EA means an environmental assessment that is a document prepared pursuant to the SERP upon completion of the SRF Program's review of a Preliminary Engineering Report or any other document describing the Proposed Project and its environmental impacts.

EIS means an environmental impact statement that is a document prepared for a Proposed Project if it is determined by the Program that the construction or operation, or both, of a Proposed Project will result in significant environmental impacts. The purpose, content, and format of an EIS will be in accordance with the SERP.

Financial Assistance means the types of financial assistance authorized by the Clean Water Act.

Financial Assistance Agreement means an agreement approved under IC 4-13-2-14.1 that contains the covenants between the Participant and the Authority concerning Financial Assistance from the Wastewater SRF.

Financial Assistance Closing means the occasion in which a Participant tenders its note, bond, guaranty agreement, or credit enhancement agreement to the Authority and the Authority provides a portion, or all, of the Wastewater SRF Financial Assistance to the Participant.

FNSI means a finding of no significant impact, issued with an EA, that the construction and operation of a Proposed Project or the improvements thereto will not significantly impact the environment.

IUP means an Intended Use Plan identifying the intended uses of the Wastewater SRF and describing how those uses support the goals of the Program.

Loan means purchasing the notes or bonds of a Participant to finance a Proposed Project or Refinancing an existing debt obligation incurred after July 1, 1993.

Operation and Maintenance includes the activities required to ensure the continuing dependable and economic function of the treatment works, including maintaining compliance with National Pollutant Discharge Elimination System permits as follows:

- (1) Operation is the control and management of the unit processes and equipment that make up the treatment works. This includes financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning, and operating activities.
- (2) Maintenance is the preservation of the functional integrity and efficiency of equipment and structures by implementing systems of preventive and corrective maintenance.

Participant means the following:

- (1) Political Subdivision as defined in IC 36-1-2-13.
- (2) Any other owner of a treatment works that is authorized by the Clean Water Act to borrow from the Wastewater SRF.

PPL means a project priority list which is generated through the Program and updated annually and may be amended from time to time. It ranks, in descending priority of need, Proposed Projects for which Participants have requested financial assistance from the Wastewater SRF for eligible expenses.

Preliminary Engineering Report or PER means the document(s) submitted by the Participant that provides the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project.

Program means the Wastewater State Revolving Fund Loan Program as established by IC 13-18-13.

Proposed Project means the activities or tasks a Participant identifies in its PER or other document required by the SRF Program related to the planning, design, and or construction of a Proposed Project for which the Participant may commit and expend funds.

Refinancing means the refinancing of a Participant's issued and outstanding bond, note or other debt obligation as permitted by the Clean Water Act through the Wastewater SRF under criteria used by the Authority from time to time.

ROD means a record of decision issued by the SRF Program upon the completion of an EIS which includes a determination of whether to proceed with a Proposed Project.

Sewer Charge System means a set of documents submitted by the Participant to the Program that may include a rate study, sewer rate ordinance, and any interlocal agreements or contracts that will determine the financial and legal capability associated with the operation and use of the treatment works project financed by the WW SRF.

SERP means the State Environmental Review Process which is a National Environmental Policy Act-compliant environmental review approved by the U.S. Environmental Protection Agency.

Study Area means the geographical area comprising a Participant's boundaries which also includes the location of the Proposed Project to be financed or refinanced by such Participant through the Wastewater SRF.

Substantial Completion Date of Construction means the date determined by the Participant and provided to the Program when all but minor components of a Proposed Project have been built, all equipment is operational, and the Proposed Project is capable of functioning as designed.

Substantive Environmental Impact means a significant adverse environmental impact resulting directly or indirectly from the construction, upgrade, expansion or operation of a Proposed Project.

Treatment works means any devices and systems for storage, transport, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works. These include one or all of the following:

1. Intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances.
2. Extensions, improvements, remodeling, additions, and alterations thereof.
3. Elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities.
4. Any works including land that will be an integral part of the treatment process or is used for ultimate disposal of residue resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land application.).
5. Any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water, sanitary sewer systems and from nonpoint sources.

Wastewater SRF means the Wastewater State Revolving Fund as authorized by the Clean Water Act, 33 U.S.C. 1251 et seq., and IC 13-18-13.

SECTION 3: USES OF THE WASTEWATER SRF

The Wastewater SRF will be used to do the following:

- (1) Provide Financial Assistance for Proposed Project planning, design, and/or construction or for other activities that are permitted by the Clean Water Act.
- (2) Refinance a Participant's outstanding indebtedness as determined to be eligible for repurchase by the Authority under the Clean Water Act.
- (3) Pay reasonable direct and indirect Program administration costs.

SECTION 4: CRITERIA FOR DETERMINING FINANCIAL ASSISTANCE ELIGIBILITY

4-1 Project Priority List

A Proposed Project must be on the PPL to be awarded Financial Assistance from the Authority.

4-2 Intended Use Plan

- (1) The Program will prepare annually an IUP and PPL pursuant to the Clean Water Act, to be effective on the first day of the State's fiscal year.
- (2) The Draft IUP will be public noticed with a 30-day public comment period. After responding to any substantive comments received, the Program will adopt the IUP. The Program may amend the IUP to add eligible projects, and change or amend Proposed Projects as necessary from time to time.
- (3) Placement on the PPL will be based on the following criteria:
 - (a) The Proposed Project must be consistent with the uses of the Wastewater SRF as identified in the Clean Water Act and IC 13-18-13.
 - (b) A Participant must submit general project information on an application form provided by the Program that is signed by the Participant's authorized representative.

SECTION 5: PROGRAM STANDARDS

Loans and other available Wastewater SRF financial assistance for Proposed Projects will be made only to a Participant that meets all of the following criteria:

- (1) Owns, operates, and maintains, or causes to be operated and maintained, a treatment works for its useful life.
- (2) Demonstrates financial, managerial, technical, and legal capability to meet the terms of the Financial Assistance Agreement and to operate and maintain the treatment works for its useful life.
- (3) Agrees to submit an annual operating budget for the Authority's approval and periodically adjust fees, charges, taxes, special assessments, and revenues available to the Participant, if any, in order to ensure receipt of sufficient revenue annually to comply with all requirements of the Financial Assistance Loan Agreement.
- (4) Agrees to:
 - (a) Maintain financial records in accordance with generally accepted government accounting principles for utilities; and
 - (b) Provide a copy of audits of the treatment works financial records as conducted by the State Board of Accounts or other certified independent auditor during the term of its Financial Assistance Agreement.
- (5) Agrees to allow inspection by the authority of the financial records related to the treatment works during the term of the financial assistance agreement.
- (6) Meets all other Program requirements.

SECTION 6: DUE DILIGENCE PROCESS

The due diligence process will include the following tasks:

- (1) The Participant will submit a completed Due Diligence form issued or authorized by the Program with the required documentation.
- (2) The Program staff will review or cause to be reviewed the due diligence form and documentation.

SECTION 7: PRELIMINARY ENGINEERING REPORT

7-1 Purpose

The purpose of the PER is to provide the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project. The PER must be approved by the Program prior to award of Financial Assistance for a Proposed Project, unless it is a Refinancing. PER information and data requirements are dependent on the type of Proposed Project and shall be determined by Program staff according to the established protocol.

The Program may request additional information from a Participant that it deems necessary to adequately assess the technical, economic, and environmental adequacy of the Proposed Project.

7-2 Development of Feasible Alternatives

The PER will identify and evaluate the range of feasible alternatives considered during the planning process, including that of taking no action. The rationale for the selected alternative along with the reasons for rejecting the others must be included.

7-3 Environmental Information

The PER consists of the following information:

- (1) A comparison of the potential environmental impacts among feasible alternatives, including that of doing nothing.
- (2) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
 - (a) Soils and prime farmland;
 - (b) Air quality;
 - (c) Ground water, Wastewater, and sole source aquifers;
 - (d) Floodplains, wetlands, waterways, and other surface waters;
 - (e) Plants and animals;
 - (f) Historic, architectural, and archaeological sites;
 - (g) Natural national landmarks; and
 - (h) Coastal zones.
- (3) The environmental information document will include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing treatment works.
- (4) Specific mitigation measures will be listed, as necessary, which will eliminate, minimize, or compensate for the environmental impacts described in subdivision (2).
- (5) If the construction of an approved project is initiated five or more years after the date of approval of a PER, an additional environmental information document will be required unless it is determined by the Program that there have been no substantial changes in the environmental impacts of the project. A reaffirmation of the FNSI will be public noticed according to the SERP.
- (7) If a Proposed Project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information will be required if there have been no significant changes to the original PER.

- (8) If a Project is to be constructed in an area which had prior environmental vetting for a previously approved Proposed Project, the environmental information submitted with the previous Proposed Project will be evaluated by the Program to determine if its scope and content encompassed the environmental impacts associated with the current project. Based on this evaluation, the Participant will only be required to submit additional information if the Program deems it necessary to complete the environmental review for the current Proposed Project.

7-4 Public Participation

The PER will include the following:

- (1) A record of the public hearing.
- (2) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

Copies of all written comments submitted by the public during the PER process will be routed through the Program for comment by the Participant.

7-5 Public hearings

At least one public hearing will be held by the Participant within the Proposed Project's Study Area for the purpose of discussing the Proposed Project. A copy of the PER and/or documents reasonably describing a Proposed Project will be available to all attendees at the hearing.

Requirements for the hearing will include the following:

- (1) The public hearing will be publicized in at least one newspaper of general circulation in the Study Area a minimum of ten days prior to the date of the hearing.
- (2) The PER will be available for public review for a minimum of ten days prior to the date of the public hearing.
- (3) Written comments will be accepted during the public hearing and for a period of five days following the public hearing according to SRF guidelines.
- (4) A sign up sheet will be available at the public hearing for all individuals interested in receiving the CE/FNSI, EA/FNSI, or EIS/ROD or other environmental documents.

SECTION 8: ENVIRONMENTAL IMPACT ASSESSMENT

8-1 Purpose

The purpose of these guidelines is to ensure that the environmental impacts of all Proposed Projects funded by the Wastewater SRF be evaluated adequately prior to award of Financial Assistance and to assure that the consideration of public comments is an integral component of the environmental impact assessment process.

8-2 Categorical Exclusions

The following classes of projects may be categorically excluded from substantive environmental review:

- (1) Minor addition, rehabilitation, improvement, or expansion of any existing treatment works that will disturb only previously disturbed land.
- (2) Rehabilitation of a treatment works distribution system that will disturb only previously disturbed land.

A Categorical Exclusion (CE) may be rescinded by the Program if it is determined that sufficient information exists to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any treatment works construction project that received a CE.

All decisions to categorically exclude a Proposed Project from substantive environmental review or to rescind a previously granted CE, will be public noticed in one newspaper of general circulation within the study area.

8-3 Environmental assessment (EA)

The purpose of an EA is to document for public evaluation and comment the potential environmental impacts of the Proposed Project and describe the feasible treatment works alternatives. The EA will be provided as an attachment to the FNSEI document and will be prepared according to the SERP.

8-4 Finding of No Significant Impact (FNSI)

The purpose of issuing a FNSI is to notify the public that based upon the Program's evaluation of all pertinent information submitted in the PER and information submitted by State and federal agencies, the construction and operation of the Proposed Project will result in no significant adverse environmental impact.

- (a) The FNSI and attached environmental document will be issued for public comment according to the SERP. If significant public comments are received during the public comment period, the FNSI will be reevaluated and a new FNSI, if appropriate, will be issued according to the SERP.
- (b) A final decision to proceed, or not to proceed, with the Proposed Project will be issued by the SRF Program after all public comments have been evaluated

8-5 Environmental Impact Statement (EIS)

The criteria for initiating an EIS are established under 40 CFR 6.108. A Record of Decision (ROD) will be issued by the Program upon completion of an EIS that will include a determination of whether to proceed with the Proposed Project. The ROD will contain specific mitigation measures that will minimize, eliminate, or compensate for the environmental impacts of the construction or operation, or both, of the Proposed Project. The ROD will be issued for public comments according to the SERP and will be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the ROD will be reevaluated and a new ROD, if appropriate, will be issued for public comments according to the SERP.

SECTION 9: SEWER CHARGE SYSTEM; SEWER USE ORDINANCE; INTERLOCAL AGREEMENT

9-1 Sewer Charge System

- (a) Every Participant will obtain the Authority's approval of its sewer charge system as part of the financial due diligence process.
- (b) Each Participant will establish rates and charges at a level adequate to produce and maintain sufficient revenue to properly operate and maintain the treatment works, and to repay all debt obligations of the treatment works.

9-2 Sewer Use Ordinance

The Participant's sewer use ordinance will meet the following requirements:

- 1. Prohibit any new unapproved connections into the treatment works.
- 2. Require that new sewers and connections to the treatment works be properly designed, constructed, and not subject to excessive infiltration and inflow.
- 3. Require that all wastewater introduced into the treatment works meet the following criteria:
 - a. Not contain toxic or other pollutants in amounts or concentrations that endanger public safety or physical or biological integrity of the treatment works.
 - b. Not cause violation of effluent or water quality limitations
- 4. Ensure that applicants for privately owned individual systems provide assurance of access to these systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation, and replacement.

9-3 Interlocal Agreement

If the Proposed Project will serve two or more Participants, the Participant will submit for approval by Authority staff an interlocal service agreement, contract, or other legally binding instrument necessary for the financing, construction, operation, and maintenance of the Proposed Project for. If the Participant is a multicounty infrastructure Authority under IC 36-7-23, the Authority may require similar documentation and assurances.

SECTION 10: PROCUREMENT

This Guidance Section will not apply to a Refinancing.

10-1 Professional Services

Participants conducting procurement for the uses authorized by the Wastewater SRF for professional services will proceed pursuant to IC 5-16-11.

Participants conducting procurement for the uses authorized by the Wastewater SRF for any activity other than professional services will proceed pursuant to IC 36-1-12.

10-2 Disadvantaged Business Enterprises (DBEs) (including Minority, and Women's Business Enterprises)

The Participant shall make the following good faith efforts to ensure that disadvantaged business enterprises are utilized when possible. Good faith efforts include taking the following actions: (1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(3) Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.

(6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

SECTION 11: CONSTRUCTION

This Guidance Section does not apply to a Refinancing.

11-1 Construction Permit

The Participant must obtain a construction permit from the Department of Environmental Management (IDEM) in accordance with State rules or other permitting authority if applicable, in conjunction with the approved Preliminary Engineering Report prior to contract award approval. The Participant must receive authorization from the Program prior to initiating procurement for construction.

11-2 Acquisition of Land, Easements, and Existing Facilities

The Participant is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the Proposed Project. Prior to the approval of contract award by the Program, the Participant will provide evidence that it has, or will have by a mutually agreeable date, the required property rights. All acquisitions of property by exercise of power of eminent domain will comply with the procedure in IC 32- 24-1 et seq.

11-3 Bid Tabulations

Certified bid tabulations and recommendations of award will be submitted to the Program for review and approval prior to construction contract award.

11-4 Contract Information Submittal

Following the Program's approval of the proposed award, each Participant will provide copies of the following to the Program:

- (1) Executed contracts.
- (2) Notices to contractors to proceed.
- (3) Bid bonds.
- (4) Performance and payment bonds.
- (5) Construction schedules.

11-5 Construction Wage Rates

Standard wage rates shall be paid for each Proposed Project as is generally prescribed for Indiana construction projects funded with public funds.

11-6 Change Orders

The Participant will submit copies of each change order to the Program for approval. Change orders that (1) significantly change the scope or design of the Proposed Project; or (2) increase the amount of financing needed for the Proposed Project require the prior approval of the Program before the work is authorized by the Participant. If the change order will result in the expenditure of more Wastewater SRF funds than the current amount of Financial Assistance approved by the Authority, an amendment increasing the amount of Financial Assistance must be executed prior to the implementation of the changes. Any additional Financial Assistance will comply with existing law as to the borrowing power of the Participant.

11-7 Inspections

The inspections will proceed as follows:

- (1) During the construction of the Proposed Project, the Participant will provide frequent inspections by qualified inspectors in sufficient numbers to ensure that the construction complies with the Program's approved PER and the IDEM issued construction permit and the terms and conditions of the contract.
- (2) The inspectors will maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor including weather conditions and problems encountered.
- (3) The Program will conduct construction inspections to determine compliance with the Program-approved PER and/or construction permit and the Financial Assistance Agreement. Inspections performed by the Program are not made to replace the Participant's responsibility to properly monitor the construction of its project, but are made solely to protect the Authority's financial interest in the Proposed Project.
- (4) The Participant will conduct a pre-final inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection.
- (5) The Participant will notify the Program after the pre-final inspection has been done and all punch list items have been corrected, or agreed to be corrected, to set up a final inspection to be made by the Program to determine the date of substantial completion.

11-8 As-Built Plans

After completion of the Proposed Project, the Participant will obtain as-built plans for the Proposed Project from its engineer and provide these to the Program. These may be submitted in an electronic format.

SECTION 12: DISBURSEMENT OF LOAN PROCEEDS

The Financial Assistance will be disbursed as follows:

- (1) The Program will review and certify the Wastewater SRF loan share of the appropriate costs incurred for the project. These costs will be documented as requested by the Program.
The Authority may pay these costs in accordance with the Financial Assistance Agreement.
- (2) The Participant will approve all project costs for payment and provide such approval to the Program.
- (3) Loan proceeds disbursed to or on behalf of the Participant will be used only for authorized purposes. Funds will not be applied to pay costs associated with a contract change order that authorized a significant change in project scope or design, or both, prior to approval by the Program.
- (4) The Program may at any time review and audit requests for loan disbursements and make adjustments for circumstances including, but not limited to, the following:
 - (a) Mathematical errors.
 - (b) Items not bought or built.
 - (c) Unacceptable construction.
- (5) All files and records pertaining to the Proposed Project will be maintained by the Participant and made accessible to the Program upon request. These files and records will be retained by the Participant for at least six years after initiation of operation as determined by the Program. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six-year period, the records will be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular six- year period, whichever is later.

SECTION 13: RESERVATION OF RIGHTS

The following rights are reserved:

- (1) Nothing in this Guidance document prohibits a Participant from requiring more assurances, guarantees, or indemnity, or other contractual requirements from any party performing work on the project.
- (2) Nothing in this Guidance document affects the Program's right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Participant that fails to carry out its obligations under this Guidance document.
- (3) Review or approval of any document by or for the Program does not relieve the Participant of its responsibility to properly plan, design, build, and effectively operate and maintain the treatment works as required by federal and State statutes, rules, regulations, permits, and best management practice. Neither the Program nor the Authority is responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other sub-agreement documents related to the project.